

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D C. 20554

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In the Matter of )  
 )  
Examination of Current Policy )  
Concerning the Treatment of )  
Confidential Information )  
Submitted to the Commission )

GC Docket No. 96-55

To: The Commission

**REPLY COMMENTS**

Aitken Irvin Lewin Berlin Vrooman & Cohn ("AILBV&C"), pursuant to Section 1.415 of the Commission's Rules,<sup>1</sup> hereby submits its Reply Comments in the above-captioned proceeding concerning treatment of confidential information submitted to the Commission by regulated entities and others.<sup>2</sup>

**I. INTRODUCTION**

1. The principal purpose of our prior comments submitted on June 14, 1996; was to make the point that regulated entities providing commercially sensitive information to the Commission require and deserve immediate certainty that the information they deliver will be treated with the highest degree of confidentiality. This is particularly important commercially since competition has increased in the telecommunications industry. This message was endorsed by nearly all the other commenters.

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<sup>1</sup> 47 C.F.R. Sec. 1.415.

<sup>2</sup> Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Notice of Inquiry and Notice of Proposed Rulemaking, GC Docket No. 96-55; FCC 96-109 (rel. March 25, 1996) ("NPRM").

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## II. DISCUSSION

1. We concur with the comments of Ameritech and others (the "Joint Parties") who stated that "as competition for telecommunications services increases, it would be a grave mistake for the Commission to decrease the protection afforded to confidential information."<sup>3</sup> Along with these and other commenters, we share the belief that, with rare and unique exceptions, the danger of disclosure of confidential business information to competitors clearly outweighs any public interest concerns addressed in the Freedom of Information Act (FOIA) and similar federal statutes.

2. Similarly, we concur with the comments of SBC Communications Inc., which stated that "[a]s competition increases, all business data becomes increasingly sensitive, and the need for confidential treatment expands exponentially. If the Commission is to ensure that competition is reasonable and equitable, then parties must be given the opportunity to protect their proprietary data."<sup>4</sup>

3. By contrast, we strongly disagree with the comments General Communications, Inc. ("GCI") which opposes greater confidentiality and seeks greater access to information submitted by Commission-regulated entities. As noted in its comments, GCI is a party in a Commission proceeding wherein it has sought a cost allocation plan and tariff information from AT&T/Alascom, Inc.<sup>5</sup> The Commission previously ruled that the information requested by GCI from AT&T/Alascom, Inc. is protected under FOIA Exemption 4.<sup>6</sup> GCI, obviously, has a private interest in obtaining confidential business records submitted to the Commission by regulated entities. We maintain that a Commission

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<sup>3</sup> See comment of Ameritech Bell Atlantic, Bell Communications Research, Bell South, NYNEX, Pacific Bell, Nevada Bell and U.S. West (the "Joint Parties").

<sup>4</sup> See SBC Communications, Inc., at p. 15. See also the comments of GTE Service Corporation, which stated, at 2, "its concern about 'the potential for Commission proceedings to be used by parties as vehicles for obtaining sensitive information regarding existing and potential competitors.'"

<sup>5</sup> See GCI at 5-6.

<sup>6</sup> See GCI at 6, fn. 15.

licensee's submissions to the Commission deserve a greater degree of confidentiality than that which the Commission has previously provided.

4. Similarly, we take exception to the comments of Time Warner Communications Holdings, Inc. ("TWComm") which opposes any attempt by the Commission to expand the confidentiality rules. TWComm also is involved in litigation before the Commission concerning certain cost support data which Cincinnati Bell and Southwestern Bell has claimed to be confidential.<sup>7</sup> Therefore, TWComm, as with GCI, has a private interest in reviewing records claimed to be confidential. Accordingly, its comments must be considered, and discounted, in this light.

5. Furthermore, an important distinction must be made between information sought for a private interest and information required for "meaningful participation in a rulemaking". When a party disputes a claim for confidentiality, the analysis must focus on whether the information sought in the FOIA request is sought for rulemaking purposes or a public interest purpose other than the requesting party's own private gain. Each individual request for confidentiality must be examined on its own merits, with deference given to the submitting party when the regulated entity asserts that the information is competitively sensitive.<sup>8</sup>

6. In addition, we take exception to the request of MCI Telecommunications Corporation that the Commission adopt a rule whereby the party requesting confidentiality would bear the burden of proof when challenges are made to the confidentiality request.<sup>9</sup> By contrast, we believe that in view of increased competition in the marketplace, the party seeking confidential records should bear a high burden of proof that these records are needed for public interest purposes and not merely for the

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<sup>7</sup> See Time Warner Communications Holdings, Inc. at 5.

<sup>8</sup> See comments of National Cable Television Association, Inc., at 2, which cited the need to prevent overly broad disclosure requests and to prevent abuse of the Commission's regulatory processes

<sup>9</sup> See MCI Telecommunications Corporation. at 5

requesting party's own private commercial benefit. We believe that this is particularly important in view of the fact, as noted by Cincinnati Bell Telephone Company, that "[o]nce competitively sensitive information is released outside the Commission, the submitting company has no ability to control how the information is used or misused."<sup>10</sup> In short, the burden should be placed upon the party that seeks the information, not the party whose confidential business information might be jeopardized by disclosure.

Respectfully submitted,

By:



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Dated: July 15, 1996

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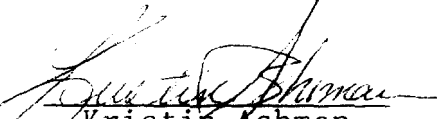
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